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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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In the matter of the approval of the proposed  
acquisition by:

AETNA, INC., a Pennsylvania corporation,

Applicant,

of

HUMANA MEDICAL PLAN OF UTAH,  
INC., a Utah corporation and wholly-owned  
subsidiary of Humana Inc., a Delaware  
corporation,

a domestic insurer.

**RECOMMENDED ORDER**

Docket No. 2015-139 AD

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BY THE PRESIDING OFFICER:

**I. INTRODUCTION**

This matter is before the Department of Insurance on Aetna, Inc.'s Form A application to acquire control of Humana, Inc. The Presiding Officer has reviewed the Form A, and considered the evidence and argument presented at the December 3, 2015 hearing. Having considered all the evidence and being fully advised, the Presiding Officer, for the reasons set forth below, recommends to the Commissioner that Aetna's Form A be APPROVED.

**II. PROCEDURAL HISTORY**

Aetna filed its Form A with the Utah Insurance Department (the "Department") on July 23, 2015. On November 9, 2015, the Department found that the Form A was complete, and scheduled a hearing for December 3, 2015. Notice of the hearing was published in *The Salt Lake Tribune*, and the *Deseret News* on November 15, 2015 and in *The Spectrum* on November 18,

2015. (Gregory Martino Aff. ¶ 21, submitted as Ex. B at hearing; Proof of Publication, submitted as Ex. D at hearing.)

A prehearing conference was held on November 24, 2015 with all parties. Among other topics, the Presiding Officer discussed with counsel for Aetna and Humana the requirements of Utah Admin. Code r.590-160-5(b)(ii) for out-of-state counsel to be able to appear before the Insurance Department in an administrative proceeding. At that time, counsel stated that they would file a Motion to Appear Pro Hac Vice with an accompanying certificate of good standing. Utah Admin. Code r.590-160-5(b)(ii). A week later, counsel emailed the Presiding Officer and asked that this requirement be waived. Counsel, on behalf of the Department, did not object to waiving the pro hac vice requirement for counsel. The Presiding Officer agreed, and under Utah Admin. Code. r.590-160-5(2) found that compliance with r.590-160-5(5)(b)(ii) was unnecessary and a deviation from the rules was permissible.

The hearing was held on December 3, 2015. Counsel for Aetna, Humana, and the Department were present. At the hearing, Aetna presented evidence in support of its application and as required by Utah Code Ann. § 31A-16-103(8)(a). The Department submitted a "Position Statement," stating that it considered the Applicant's application "sufficient and complete." (Utah Insurance Department's Position Statement Re: Aetna Inc.'s Application, p. 1, Ex. A.) Counsel for Aetna asked that nothing in the hearing be construed to constitute waiver of the protected or private nature of documents it has submitted for the proposed acquisition under GRAMA or other applicable government record or confidentiality laws. Utah Code Ann. § 63G-2-101 et seq.

### III. LEGAL STANDARD

Before acquiring control of a domestic insurer, the acquiring entity must: file with the Utah Department of Insurance Commissioner a statement containing the information required by Utah Code Ann. § 31A-16-103, and provide a copy of that statement to the insurer being acquired. Utah Code Ann. §§ 31A-16-103(1)(a) and (b). Then, the Commissioner must approve the acquisition. *Id.* § 31A-16-103(1)(a)(iii).

The Commissioner must approve an acquisition unless the Commissioner finds that: (1) after the acquisition, the applicant would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed; (2) the effect of the acquisition would: substantially lessen competition in insurance in this state; or tend to create a monopoly; (3) the financial condition of any acquiring party might: jeopardize the financial stability of the insurer; or prejudice the interest of: its policyholders; or any remaining securityholders who are unaffiliated with the acquiring party; (4) the terms of the acquisition are unfair and unreasonable to the securityholders of the insurer; (5) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are: unfair and unreasonable to policyholders of the insurer; and not in the public interest; or (6) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control. Utah Code Ann. § 31A-16-103(8)(a).

The applicant must prove the elements of section 31A-16-103(8)(a) by a preponderance of evidence. Utah Admin. Code. r.590-160-5(10). A preponderance of the evidence “means the



greater weight of the evidence, or as sometimes stated, such degree of proof that the greater probability of truth lies therein.’” *Handy v. United States Bank, N.A.*, 2008 UT App 9, ¶ 25, 177 P.3d 80 (quoting *Wightman v. Mountain Fuel Supply Co.*, 302 P.2d 471, 473 n.5 (1956) (further citation omitted)).

#### **IV. DISCUSSION**

At hearing, Aetna called Gregory Martino, Vice President of Government Relations at Aetna Inc. and Joseph C. Ventura, Associate General Counsel and Assistant Corporate Secretary at Humana Inc. to testify as to the requirements of Utah Code Ann. 31A-16-103(8)(a). Aetna also provided affidavits from its two witnesses, stating in greater detail the testimony offered at hearing. (Martino Aff., Ex. B; Joseph C. Ventura Aff., Ex. C.) Mr. Martino testified as to all six requirements of Utah Code Ann. § 31A-16-103(8)(a), and Mr. Ventura testified as to only five of the requirements. Mr. Martino and Mr. Ventura offered extensive and persuasive testimony regarding the nature of the transaction, and that the transaction will meet the requirements of Utah law. No party or person appeared at the hearing to oppose the proposed transaction.

Having considered the parties’ evidence and arguments, and being fully advised, the Presiding Officer recommends to the Commissioner that the Form A application be approved, and enter the following Findings of Fact and Conclusions of Law:

#### **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. After Aetna’s acquisition of Humana Medical Plan of Utah (the “Acquisition”), Aetna will be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed.

- a. Mr. Martino testified that Humana Medical Plan of Utah is currently licensed as an HMO, and that the proposed Acquisition will not make changes that would

jeopardize Humana's ability to continue to be licensed as an HMO in Utah.

(Martino Aff. ¶¶ 23–24 Ex. B.) Mr. Ventura agreed and offered similar testimony.

(Ventura Aff. ¶¶ 13–15 Ex. C.)

2. The Acquisition will not substantially lessen competition in insurance in Utah or tend to create a monopoly in insurance.

- a. Mr. Martino testified regarding Aetna's analysis of competition in Utah as a result of the proposed Acquisition. Mr. Martino stated that Aetna and Humana offer coverage in Utah under fifteen lines of business. (Martino Aff. ¶ 28 Ex. B.)
- b. For seven of the fifteen business lines, there is no competitive overlap between the two companies. (*Id.* ¶ 29.)
- c. For four of the fifteen business lines, the competitive overlap is small and the share increase is so small that there is no prospect of anticompetitive impact. (*Id.* ¶ 30.)
- d. For the other four business lines, Aetna demonstrated that the Acquisition will not substantially lessen competition or tend to create a monopoly in Utah. (*Id.* ¶¶ 31–37.)
- e. Mr. Ventura did not testify as to this second requirement. (Ventura Aff. ¶ 16 Ex. C.)

3. The financial stability of the insurer, its policyholders, or any remaining securityholders who are unaffiliated with the acquiring party will not be jeopardized.

- a. Mr. Martino testified that not only would the financial condition of Aetna not jeopardize Humana, but rather, the financial condition and resources of Aetna will

strengthen Humana's subsidiaries' financial stability. (Martino Aff. ¶¶ 38–43 Ex.

B.) Mr. Ventura agreed. (Ventura Aff. ¶¶ 17–19 Ex. C.)

4. The terms of the Acquisition are fair and reasonable to the securityholders.

- a. Mr. Martino testified that the terms are fair and reasonable to the securityholders of Humana. (Martino Aff. ¶ 44 Ex. B.) Mr. Martino testified that Aetna and Humana each engaged independent legal and financial advisors to analyze the Acquisition extensively, that the Boards of Directors of both companies unanimously approved the transaction, and that Aetna's stockholder approved the Acquisition with 99.01% of the shares voted at the meeting voting in favor. (*Id.* ¶¶ 44–53 Ex. B.) Mr. Ventura similarly testified of the extensive analysis, and that Humana stockholders approved the transaction with 99% of the approximately 124 million shares voting during the stockholder meeting voting in favor of the transaction. (Martino Aff. ¶¶ 20–28 Ex. C.)

5. The plans which Aetna has to merge with Humana Medical Plan of Utah are not unfair or reasonable to Humana policyholders and not contrary to the public interest.

- a. Mr. Ventura testified that after the Acquisition, the combined organization will be better positioned to “help drive higher-quality and better-value health care by leveraging best-in-class practices from the two organizations . . . .” (Ventura Aff. ¶ 30 Ex. C.) Mr. Martino agreed, referencing, *inter alia*, Humana's chronic-care capabilities. (Martino Aff. ¶¶ 54–67 Ex. B.)

6. The competence, experience, and integrity of those persons who will control the operation of Humana Medical Plan of Utah is such that it is in the interest of the Humana policyholders and the public to permit the Acquisition.




- a. Mr. Martino and Mr. Ventura each testified that they know the persons who will control the operation of Humana after the Acquisition, and that they are individuals of the highest competence, experience, and integrity. (Martino Aff. ¶¶ 68–79 Ex. B; Ventura Aff. ¶¶ 40–44 Ex. C.)

#### **V. RECOMMENDED ORDER**

The Presiding Officer recommends that the Commissioner enter an Order, finding that the requirements of Utah Code Ann. § 31A-16-103(8) have been met, and approve the acquisition of Humana Medical Plan of Utah by Aetna.

DATED December 7<sup>th</sup>, 2015.

  
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Greg Soderberg  
Presiding Officer  
Utah Insurance Department  
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Salt Lake City, UT 84114  
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**ORDER**

Docket No. 2015-139 AD

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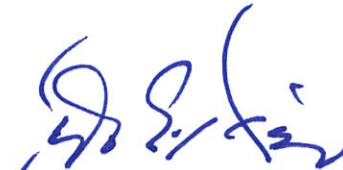
BY THE COMMISSIONER:

Todd E. Kiser, Commissioner of the Utah Insurance Department, has reviewed the  
Presiding Officer's Recommended Order and adopts the recommendation in its entirety.

**ORDER**

Aetna's Application regarding the acquisition of Humana Medical Plan of Utah, Inc. by  
Aetna, Inc. is APPROVED.

Dated December 4, 2015.



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Todd E. Kiser, Insurance Commissioner



## ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. § 63G-4-401 and Administrative Rule 590-160. Failure to seek agency review shall be considered a failure to exhaust administrative remedies. Utah Admin. Code r.590-160-8; Utah Code Ann. § 63G-4-403.

## JUDICIAL REVIEW

Judicial review of this Order may be obtained by filing a petition consistent with Utah Admin. Code r.590-160-8 and Utah Code Ann. § 63G-4-403.

## CERTIFICATE OF MAILING

On December 10, 2015 a copy of the above and foregoing RECOMMENDED ORDER and ORDER was sent to:

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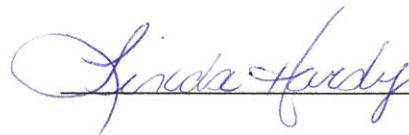
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